

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ MAR 13 2024 ★

LONG ISLAND OFFICE

Peter MERGENTHALER, Mac Truong,

Plaintiffs,

- against -

ACTION CIVIL No. **23-CV-6926**

Judge: **Joan M. Azrack.**

James W. ZIMBLER, Extreme Mobile
Coatings Corp, Ltd., Extreme Mobile Coatings
Worldwide, Corp., Structural Enhancement
Technologies Corporation, Eco-Petroleum
Solutions, Inc., Chase Bank, Harry Zhabilov,
Billy Ray Miller, Immunotech Laboratories, Inc.,
Charles Cotropia, ENZOLYTICS, Inc.,
Biogenysis, Inc., Virogenitics, Inc.,
Defendants,

Plaintiff Pro Se Mac Truong's
**NOTICE OF MOTION FOR PRIOR LEAVE
TO FILE THIS ACTION IN COMPLIANCE WITH
THIS COURT'S MARCH 1 2024 OTSC**

To the above-named Defendants:

PLEASE TAKE NOTICE that upon filing the Affirmation dated March 8, 2024, of Dmt MacTruong a/k/a Dr. Mac Truong, Plaintiff *pro se* herein, and other supporting papers, a Motion shall be made by submission of moving papers before Honorable Joan M. Azrack, U.S.D.J, in Courtroom # _____, in the Courthouse of the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, Long Island Courthouse, 100 Federal Plaza, Central Islip, New York 11722, on **FRIDAY MARCH 15 2024, at 10:00 AM**; or any place or time thereafter as may be subsequently directed by the Court, for an

REC'D IN PRO SE OFFICE
MAR 13 '24 PM 3:48
ORDER

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EDNY PRO SE OFFICE

- (1) **FINDING THAT** any apparent violation by Plaintiff Mac Truong of the filing injunction order that Judge Dora L. Irizarry previously entered against him on February 22, 2016 [See Truong v. Cuthbertson, No. 15-CV-4268, 2016 WL 7379070] is moot and/or excusable as a matter of law; and
- (2) **GRANTING PLAINTIFF MAC TRUONG's** instant motion-application for prior leave to file this new civil action in this Court against all the Defendants listed in the caption; and
- (3) **GRANTING PLAINTIFF MAC TRUONG's** respectful request that this Court issue summons to be served on all Defendants herein prior to April 19, 2024; and
- (4) **GRANTING PLAINTIFFS PRO SE HEREIN** the privilege of filing their pleadings and papers with the Court through the Court's electronic filing system; and
- (5) **GRANTING all other relief** as the Court may deem fair, just, and appropriate in the circumstances.

PLEASE TAKE FURTHER NOTICE, that no memorandum of law shall be served with these papers at this time because Movant is *pro se* and there is no novel issue of law, and opposition papers, if any, must be in writing and served upon Movant and filed with the Court 3 days prior to the return date, and that this motion will be made by submission of papers and, except as otherwise **directed in writing by the Court** with a rational explanation, neither physical appearance nor oral argument will be required by any party on the hearing date.

Dated: March 8, 2024,

Sincerely Yours,


Dmt MacTruong, Plaintiff *pro se*,
35 Journal Square, Suite 419
Jersey City, NJ 07306
(914) 215-2304
Dmtforest@aol.com,
lmditprose@aol.com

PLAINTIFF *PRO SE* MAC TRUONG'S

AFFIRMATION

**IN SUPPORT OF MOTION FOR PRIOR LEAVE
TO FILE THIS ACTION IN COMPLIANCE WITH
THIS COURT'S MARCH 1 2024 OTSC**

I, DMT MACTRUONG, a/k/a Dr. Mac Truong, affirm under the penalty of perjury as follows:

1. I am the second Plaintiff *pro se* in the instant proceeding before this Court against all the Defendants herein.
2. I have personal knowledge of, and am familiar with, all the facts hereinafter related in support of this motion for an order granting relief duly set forth in the instant Notice of Motion.

PRELIMINARY STATEMENT

3. The Court and all concerned parties are supposed to be familiar with all the prior pertinent facts and circumstances of this action on file with the Court. Movant will not as such repeat any fact or law that are not necessary for the Court to determine the issues being raised in the motion.

**GROUND'S SHOWING WHY ANY APPARENT
VIOLATION BY PLAINTIFF MAC TRUONG OF THE FILING
INJUNCTION ORDER BY JUDGE IRIZARRY IS MOOT**

4. As duly and undisputedly reflected on court records (i) only on or about February 26, 2024, Plaintiff *pro se* Peter Mergenthaler paid the court fees as required by law to establish the subject-matter jurisdiction of the Court over the causes of action alleged in

Plaintiff's complaint, (ii) only on March 1, 2024, honorable Joan M. Azrack of this Court directed that summons in this proceeding shall issue and Plaintiffs must serve it prior to April 19, 2024 on all Defendants to commence the prosecution of this case.

5. Viewing the foregoing, now is not yet the time for Defendant Chase Bank to renew their denied-without-prejudice-to-renew motion to dismiss Mac Truong's share of the action based on Chase Attorney's frivolous allegation that Plaintiff Mac Truong had failed to file an application for leave to file this new action in violation of Judge Irizarry's 2016 Injunction order. [See, OTSC.]
6. As a matter of fact and law, Defendant Chase Bank is duly given time by this Court to renew its motion to dismiss complaint so soon as it is served with summons prior to April 19, 2024.
7. Consequently, Plaintiff Mac Truong's duty, if any, to explain why I had not secured prior leave to file a new action in the Court is moot and no explanation is due.

**GROUND'S SHOWING WHY PLAINTIFF'S INSTANT
MOTION FOR PRIOR LEAVE TO FILE THIS NEW ACTION
SHOULD BE GRANTED IN COMPLIANCE WITH THE 2016
FILING INJUNCTION ORDER BY JUDGE IRIZARRY.**

8. Whether Judge Irizarry's 2016 filing injunction order was fair just and meritorious, it is undisputed that the Court did so because in substance, the Court opined that Plaintiff Mac Truong herein had a long history of filing frivolous actions, and concluded that before the Court would accept his next filing, Plaintiff must demonstrate that his new action is not frivolous, i.e., the causes of action must be well articulated and have merits on their faces.
9. The best evidence showing that the complaint herein is not frivolous on its face and that Plaintiffs deserve to have their day in court to prosecute it is SDNY Chief Judge Laura Taylor Swain's Transfer Order dated September 8, 2023 [on file with the Court.] Indeed, nowhere has the Court determined or even implied that the Complaint is frivolous or meritless on its face. The Court only determined that the venue of this new action is more proper in this EDNY than in the SDNY.

**GROUND'S SHOWING WHY PLAINTIFFS *PRO SE*
SHOULD BE GRANTED THE PRIVILEGE OF FILING OUR
PLEADINGS AND RESPONSIVE PAPERS THROUGH
THE ELECTRONIC FILING SYSTEM OF THE COURT**

10. Plaintiff *pro se* Mac Truong has filed literally thousands of lawsuits with the U.S., NYS, and NJ court systems since 1982, well prior to the existence of PC and then electronic filing.
11. Plaintiff Peter Mergenthaler is blind, 84 years of age, and in ill health.
12. Upon information and belief, *pro se* litigants are not prohibited by law to file their papers electronically if they so choose. It is rather a privilege for them to be allowed to file their papers by hand with the clerk of the court, instead of being required like lawyers to file electronically and have no option of filing pleadings and motions by delivering them to the clerk of the court.
13. Viewing the foregoing, in the interest of justice and judicial economy, Plaintiffs *pro se* herein should be allowed to have full access to the Court's electronic filing system.
14. Finally, may it please the Court to direct the Clerk of the Court to note that the undersigned plaintiff has changed my office address from 875 Bergen Avenue to **Mac Truong 35 Journal Square, Suite 419, Jersey City, NJ 07306.**

CONCLUSION

15. Since it is undisputed that (i) the issue why Plaintiff Mac Truong had allegedly failed to request prior leave to file this proceeding is moot, and (ii) Defendant Chase Bank is not at all unfairly prejudiced by such alleged failure, and (iii) none of the orders having been issued so far by the SDNY and this EDNY in this matter have implied that the Complaint herein is frivolous, or meritless as a matter of law, Plaintiff's instant motion for leave to file this new action should be granted.

WHEREFORE Plaintiff Mac Truong respectfully moves the Court for a prior leave to file this new action and for all other appropriate relief as more fully set forth in the instant Notice of Motion, and/or such other and further ancillary relief as the Court may deem fair, just, and appropriate in the circumstances.

Dated: March 8, 2024



MacTruong, Plaintiff *pro se*
35 Journal Square, Suite 419,
Jersey City, NJ 07306.
(914) 215-2304
Dmtforest@aol.com
lmditprose@aol



AFFIDAVIT OF SERVICE

On March 11, 2024, I served by U.S. Priority Mail with Tracking **and/or email** the true copies of the within document(s):

Plaintiff Pro Se Mac Truong's
NOTICE OF MOTION FOR PRIOR LEAVE
TO FILE THIS ACTION IN COMPLIANCE WITH
THIS COURT'S MARCH 1 2024 OTSC

upon the following parties and/or individuals:

James W. Zimbler,
110 Smithtown Blvd, Ste 3
Nesconset, NY 11767
(631) 257-5454

IMMUNOTECH LABORATORIES,
INC.,
2000 North Sentra Express Way
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Extreme Mobile Coatings Corp, Ltd.,
110 Smithtown Blvd, Ste 3
Nesconset, NY 11767
(631) 257-5454

CHASE BANK,
1000 Rocky Run Pkwy
Wilmington, DE 19803

Extreme Mobile Coatings Worldwide
Corp.,
110 Smithtown Blvd, Ste 3
Nesconset, NY 11767

Harry Zhabilow
2000 North Sentra Express Way
Plano, Texas 75074.

Structural Enhancement
Technologies Corporation,
110 Smithtown Blvd, Ste 3
Nesconset, NY 11767

Billy Ray Miller,
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Allen, Texas 75013

Eco-Petroleum Solutions, Inc.,
110 Smithtown Blvd, Ste 3
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Charles Cotropia,
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ENZOLYTICS, Inc.
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

Biogenysis, Inc.,
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

Virogenitics, Inc.,
1101 Raintree Circle, Suite 130,
Allen, Texas 75013

Dated: 11th Day of March 2024



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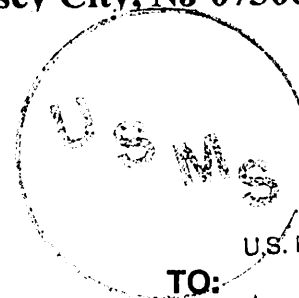
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TO:

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LONG ISLAND OFFICE

United States District Court
New York Eastern District
Clerk of the Court
100 Federal Plaza
Central Islip, NY 11722